In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.3743 of 2005.

Date of decision:16.1.2007.

State of Haryana and others.

...Appellants.

Versus

Om Parkash.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Suresh Monga, Senior Deputy Advocate General Haryana.

Mr.S.K.Yadav Advocate for the respondent.

...

Judgment.

S. N. Aggarwal, J.

Om Parkash respondent was working as a Clerk in the office of Deputy Commissioner, Narnaul with effect from 29.5.1986. He had failed to pass the typing test. He was granted one increment under Assured Career Progression Scheme (in short ACP). However, on finding the same to be illegal, it was withdrawn by the appellants vide impugned order dated 29.1.2000. The same was challenged by the respondent by filing a civil suit.

The suit was contested by the appellants.

The learned trial Court dismissed the suit vide judgment

and decree dated 24.3.2005.

The respondent filed an appeal. The appeal was accepted by the learned Lower Appellate Court vide judgment and decree dated 24.3.2005.

Hence, the present appeal.

The learned State counsel submits that since the respondent has failed to pass typing test, therefore, he was not granted the annual increments. Since the respondent was not granted annual increments, therefore, the question of grant of ACP did not arise. Reference was also made to the provisions of Order 5 Rule 3(a) of the Haryana Government Gazette (Extra) dated 7.1.1998. It was submitted that under the said rule, the respondent was not entitled for promotion. Therefore, he was not entitled to any increment under ACP also. Hence, it was prayed that the impugned judgment dated 1.8.2005 be set aside.

Learned counsel for the respondent, on the other hand, submitted that the respondent has passed tying test with effect from 9.1.2006 for which he has placed on the file a Photostat copy of letter dated 10.1.2006 issued by the Deputy Commissioner, Mahendargarh at Narnaul. It was further submitted that even the respondent has been promoted as an Assistant vide letter dated 8.6.2006 by the Commissioner, Gurgaon Division, Gurgaon. A photostat copy of that letter dated 8.6.2006 was also placed on the file.

The learned State counsel after receiving instructions from Mahabir Singh, Assistant in the office of Deputy Commissioner, Narnaul admitted these facts. Since the respondent has passed the typing test with effect from 9.1.2006, therefore, he is entitled to annual

increment under ACP immediately thereafter because the ground on which the increment under ACP was held up has been removed. The learned State counsel also acknowledges this position.

Accordingly, this appeal is disposed of with the observations that the respondent would be entitled to increment under ACP immediately after 9.1.2006 and before he was promoted as an Assistant.

January 16,2007. **(S. N. Aggarwal)**
Jaggi **Judge**